ting's liabilities and, for that purpose, the plaintiffs were only prepared to allow Paya Kamunting to incur liabilities not exceeding $1m at any one time for so long as the first defendant's indebtedness to the plaintiffs remain outstanding.

For that matter, the deposit of Paya Kamunting's titles with the plaintiffs under cl 10.1.6 of the loan agreement cannot be the real security for the loan as it is only one of the convenants which the first defendant is obliged to observe under cl 10. The titles are only deposited and not charged to the plaintiffs. Thus, in the event of the first defendant's default of its obligations under the loan agreement, the plaintiffs cannot proceed to sell any of the titles as the plaintiffs are not chargees of the lands. They do not hold any registrable interests over the titles in question. It is because of this that the deposit of the titles has been described as a negative pledge in the plaintiffs' letter of offer.

The defendants, however, attempted to establish that the deposit of the titles had the effect of giving the plaintiffs a registrable interest and for this they relied on a number of authorities where the facts show that titles were in fact charged by the borrower to the lenders: see the cases of *Cheah Theam Swee & Anor* v *Overseas Union Bank Ltd & Ors*[1] and *Yap Sing Hock Holdings Bhd & Ors* v *Chuah Teong Hooi & Ors*,[2] where the securities were provided by a third party and not by the company whose shares were being purchased. Again in *Chung Khiaw Bank Ltd* v *Hotel Rasa Sayang Sdn Bhd & Anor*,[3] the contravention is clear as the security was given by the hotel whose shares were being purchased.

In this case, as the titles were only deposited with the plaintiffs, Paya Kamunting can, for good reason, request for the release of any of its titles and the plaintiffs cannot unreasonably withhold releasing the title. In fact, such a request was made in March 1986 to enable Paya Kamunting to provide the title as a security for a loan of $10m granted by the Co-operative Central Bank to the fourth defendant. For this release, $3m had been paid to the plaintiffs' account but I do not consider this a contravention of s 67(1) as the transaction took place in 1986. For there to be any contravention, the defendants must establish that the contravention took place in 1983 when the loan of $11.7m was granted to the first defendant.

On the facts of this case, since the deposit of the Paya Kamunting's titles does not, I consider, contravene s 67(1) of the Companies Act 1965, I had accordingly dismissed the defendants' appeal with costs.

Appeal dismissed.

Solicitors: *M Segaram & Co; Rashid & Lee.*

Reported by *Eunice Lee*

Lee Kuan Yew v Chin Vui Khen & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO S6-25-235-87
SITI NORMA YAAKOB J
6 JULY 1989

Civil Procedure — Further and better particulars — Striking out of — Principles applicable

Tort — Defamation — Pleading of — Particulars to be provided

Tort — Defamation — Whether consistent with constitutional right of freedom of speech

Constitutional Law — Freedom of speech and expression — Restrictions imposed by law

The defendants published two articles in the *Sunday Star*, an English language newspaper widely circulated in Malaysia, commenting on the suicide of Mr Teh Cheang Wan, the then Minister of National Development in Singapore and the collapse of the National Bank of Brunei. These articles in particular commented on the effect of these incidents on the image of Singapore and on the plaintiff, then the Prime Minister of Singapore.

The plaintiff sued the defendants for defamation. In their defence, the defendants pleaded, inter alia, justification, fair comment and the protection of art 10 of the Federal Constitution (right to freedom of speech and expression). The plaintiff successfully applied for the defendants to give further particulars of the defences of justification and fair comment. The defendants accordingly filed further and better particulars. The plaintiff was not satisfied with the manner the particulars were filed and applied to have them struck out. He also applied to strike out the defence based on art 10.

The court first dealt with the application to strike out the particulars. After hearing arguments, the court ordered the defendants to restate their further and better particulars. Pursuant to this, the defendants supplied the second set of further and better particulars. The defendants listed out extracts of the articles, described them as 'comment', 'statement of fact' etc and then listed particulars. The plaintiffs applied again to strike out the particulars as well as the defence based on the Federal Constitution.

Held, granting the application:

(1) Reference to documents alone cannot be regarded as the particulars of the fact that the defendants have been ordered to furnish; such reference points more to the nature of the evidence which the defendants intend to produce at the trial.

(2) When the words complained of allude to general charges, a defendant who pleads justification must state some specific acts and instances of misconduct imputed to the plaintiff supported by precise particulars of fact as tending to show the truth of such misconduct.

(3) In this case, the particulars supplied by the defendants are too general as to embarrass the plaintiff as he does not know the precise acts he is alleged to have done which justify the charges against him.

(4) The defendants have pleaded justification and fair comment separately, and thus are relying on them as two distinct and separate defences. Thus pleading the general particulars as the defendants have done is quite unnecessary and redundant.

(5) The conduct of the defendants, their reluctance to supply sufficient and material particulars, and the substance of the particulars that they have supplied, lead to the conclusion that they do not have the material facts on which they can justify the defamatory meanings of the words that they have published or on which their comments are based. The relevant paragraphs of the defence are accordingly struck out.

(6) The previous decisions of the Malaysian courts show that the rights conferred by art 10 of the Federal Constitution are not absolute but are subject to restrictions imposed by law under art 10(2)(a).

(7) Although Parliament has not, under art 10(2)(a), enacted any law against defamation, the court considers that Parliament need not do so as at Merdeka Day, there were already laws in existence against defamation. These laws are to be found in s 3(1) of the Civil Law Act 1956 as modified by the Defamation Act 1957, which continues to have the force of law to this day as Parliament has not repealed it. Read with art 162(1), art 10(2)(a) does not have the effect of eliminating the existing laws in operation prior to Merdeka Day.

(8) In terms and expression, the First Amendment to the Constitution of the United States of America is totally and radically different from art 10 and the American case law is not of any persuasive value.

(9) Article 10 does not prohibit the plaintiff from pursuing his rights under the law of defamation. The Defamation Act 1957 restricts the defendants' right to free speech and expression and the only known defences in any action for libel are those stated in the Act which does not include art 10. Accordingly the relevant paragraph of the statement of defence is struck out as being frivolous and vexatious.

[Bahasa Malaysia summary

Defendan menerbitkan dua buah rencana dalam *Sunday Star*, sebuah akhbar Inggeris yang diedar secara luas dalam Malaysia, dan berkomen tentang pembunuhan Encik Teh Cheang Wan, Menteri Pembangunan Nasional dalam Singapura pada ketika itu dan kerobohan Bank Nasional Brunei. Rencana-rencana ini secara khususnya berkomen atas kesan kejadian-kejadian ini atas imej Singapura dan atas plaintif, Perdana Menteri Singapura ketika itu.

Plaintif menuntut defendan atas fitnah. Dalam pembelaan mereka, defendan-defendan pli antara lainnya, justifikasi, komen berpatutan dan perlindungan perkara 10 Perlembagaan Persekutuan (hak untuk kebebasan berucap dan ungkapan). Plaintif telah dengan berjayanya memohon supaya defendan-defendan memberi butir-butir lanjut dan jelas pembelaan-pembelaan justifikasi dan komen perpatutan. Defendan-defendan pun menfail butir-butir lanjut dan jelas. Plaintif tidak berpuashati dengan butir-butir yang difail dan memohon supaya ianya dibatalkan. Beliau juga memohon untuk membatalkan pembelaan-pembelaan berdasarkan perkara 10.

Mahkamah pada mulanya berurus dengan permohonan untuk membatalkan butir. Selepas mendengar hujah-hujah, mahkamah mengarah supaya defendan-defendan menyatakan semula butir-butir lanjut dan jelas mereka. Berlanjutan daripada ini, defendan-defendan menyediakan set kedua butir-butir lanjut dan jelas. Defendan-defendan menyenaraikan petikan-petikan rencana, menghuraikan mereka sebagai 'komen' 'kenyataan fakta' dan lain-lain dan kemudiannya menyenaraikan butir-butir. Plaintif memohon semula untuk membatalkan butir-butir bersama dengan pembelaan berdasarkan Perlembagaan Persekutuan.

Diputuskan, membenarkan permohonan:

(1) Rujukan kepada dokumen-dokumen sahaja tidak boleh dianggap sama seperti butir-butir fakta yang defendan telah diarahkan memberi; rujukan seperti itu menunjukkan kepada jenis keterangan yang defendan ingin membawa ke perbicaraan.

(2) Apabila perkataan-perkataan yang diadu membayangkan tuduhan-tuduhan am, seseorang defendan yang pli justifikasi mesti menyatakan beberapa tindakan tertentu dan contoh-contoh kelakukan pengurusan yang tidak cekap yang dianggap sebagai perbuatan plaintif dan disokong oleh butir-butir fakta yang tepat yang cenderung kearah menunjukkan bahawa kelakuan salah itu telah berlaku.

(3) Dalam kes ini, butir-butir yang dibekalkan oleh defendan-defendan adalah terlalu am sehingga memalukan plaintif kerana beliau tidak tahu tindakan-tindakan tertentu yang didakwa telah dilakukan oleh beliau yang mengalaskan dakwaan terhadapnya.

(7) Defendan-defendan telah pli justifikasi dan komen berpatutan secara berasingan, dan oleh itu adalah bergantung pada mereka sebagai dua pembelaan yang berasingan dan tersendiri. Oleh itu, pli butir-butir yang am seperti defendan telah dibuat adalah tidak perlu dan berlebihan.

(8) Kelakuan defendan-defendan, keengganan mereka untuk membekalkan butir-butir yang mencukupi dan material, dan isi kandungan butir-butir yang mereka telah beri, menimbulkan kesimpulan bahawa mereka tidak ada fakta-fakta material di atas mana mereka boleh mempertahankan makna-makna fitnah perkataan-perkataan yang mereka telah terbitkan atau atas mana komen-komen mereka didasarkan. Perenggan-perenggan relevan pembelaan adalah perlu dibatalkan.

(9) Keputusan-keputusan mahkamah Malaysia yang lalu menunjukkan bahawa hak-hak yang deberi oleh perkara 10 Perlembagaan Persekutuan adalah tidak mutlak tetapi adalah tertakluk kepada had-had yang dikenakan oleh undang-undang di bawah per 10(2)(a).

(10) Walaupun Parlimen tidak, di bawah per 10(2)(a), menegakkan sebarang undang-undang terhadap fitnah, mahkamah menganggap bahawa Parlimen tidak perlu berbuat demikian setakat Hari Merdeka, kerana telahpun terdapat undang-undang yang ada terhadap fitnah. Undang-undang ini adalah didapati dalam seksyen 3(1) Akta Sivil 1956 seperti diubah oleh Akta Fitnah 1957, yang masih berkuatkuasa undang-undang sehingga hari ini kerana Parlimen belum memansuhkannya. Berbaca bersama per 162(1), per 10(2)(a) tidak mempunyai kesan menanggalkan undang-undang yang kini beroperasi sebelum Hari Merdeka.

(11) Dalam terma dan ungkapan, Pindaan Pertama kepada Perlembagaan United States of America adalah sama sekali dan secara radikal berbeza daripada per 10 dan kes undang-undang Amerika adalah tidak ada sebarang nilai pemujuk langsung.

(12) Perkara 10 tidak menghalang plaintif daripada mengejar hak-haknya di bawah undang-undang fitnah. Akta Fitnah 1957 menghadkan hak defendan kepada ucapan bebas dan ungkapan dan pembelaan yang hanya diketahui dalam sebarang tindakan untuk libel adalah seperti dinyatakan dalam Akta yang tidak termasuk per 10. Oleh yang demikian perenggan relevan pernyataan pembelaan adalah dibatalkan kerana remeh dan menyusahkan.]

[*Editorial Note*: The defendants appealed to the Supreme Court vide Civil Appeal No 02-262 of 1989 and the court (compris-

ing Abdul Hamid Omar LP, Mohamed Azmi and Gunn Chit Tuan SCJJ) dismissed the appeal on 25 June 1990.]

Cases referred to

1 *Lucas-Box* v *News Group Newspapers Ltd* [1986] 1 WLR 147; [1986] 1 All ER 177 (folld)
2 *Zierenberg & Anor* v *Labouchere* [1893] 2 QB 183 (folld)
3 *Madhavan Nair & Anor* v *PP* [1975] 2 MLJ 264 (refd)
4 *Lau Dak Kee* v *PP* [1976] 2 MLJ 229 (refd)
5 *PP* v *Ooi Kee Saik & Ors* [1971] 2 MLJ 108 (refd)
6 *PP* v *Param Cumaraswamy (No 2)* [1986] 1 MLJ 518 (refd)
7 *Santokh Singh* v *Delhi Administration* AIR 1973 SC 109 (refd)
8 *Purshottam Lal* v *Prem Shanker* AIR 1966 All 377 (refd)

Legislation referred to

Civil Law Act 1956 s 3(1)
Defamation Act 1957
Federal Constitution arts 10, 160, 162
Rules of the High Court 1980 O 18, O 78 r 3(2), O 32 r 2, O 33 r 2
Constitution of India 1949 art 19
Constitution of the United States of America First Amendment

C Abraham (*N Navaratnam* with him) for the plaintiff.
DJ Puthucheary (*A Sreenevasan* and *Iain Sedgley* with him) for the defendants.

Cur Adv Vult

Siti Norma Yaakob J: The two offending articles complained of by the plaintiff in this defamation suit appeared in two issues of the *Sunday Star*, an English language newspaper which is widely circulated in Malaysia, of which the first defendant is the group chief editor and the second defendant its proprietor and publisher.

The first article headed 'Graft in the squeaky clean republic', published on 1 February 1987, is set out verbatim in para 3 of the statement of claim, and contains a 26-paragraphed commentary of the political situation in Singapore, following the suicide Mr Teh Cheang Wan, the plaintiff's Minister of National Development and the collapse of the National Bank of Brunei. The article goes further to trace the effect these two events had on the image of the government of Singapore, particularly to the plaintiff as its Prime Minister, following the discovery of corruption amongst prominent businessmen and senior civil servants in the republic.

The second article that was published on 22 February 1987, entitled 'Second shock in graft affair', is a follow up of the commentary on the first article and contains ten paragraphs as set out in para 6 of the statement of claim. This second article identified the specific act of corruption committed by the Minister of National Development, named the other persons implicated in the act and ended with a question as to whether this is only an isolated act of corruption committed by a cabinet minister or whether graft is rampant and widespread in the government headed by the plaintiff.

In denying that these two articles are defamatory of the plaintiff whether personally or as the Prime Minister of Singapore, the defendants have pleaded the following four defences:

(1) The protection of art 10(1)(a) of the Federal Constitution, ie every citizen has a right to freedom of speech and expression and to that end this action is not maintainable.
(2) Justification, ie the words complained of in their natural and ordinary meaning are true in substance and in fact.
(3) Fair comment, which is pleaded in the alternative, ie the words were fair comment upon a matter of public interest, namely, the conduct of the plaintiff in the discharge of his duties as the Prime Minister of Singapore.
(4) Qualified privelege, ie the words were published upon an occasion of qualified privelege.

Under O 78 r 3(2) of the Rules of the High Court 1980 ('the Rules'), it is incumbent upon the defendants when relying on the pleas of justification and fair comment to plead particulars of the facts that are sought to be justified and on which the comments have been based. Instead of disclosing particulars of such facts in their original statement of defence, the defendants have pleaded that such particulars would be supplied separately.

The original statement of defence was filed on 15 April 1987 and on 8 May 1987, the plaintiff's solicitors wrote to the defendants' solicitors requesting particulars of the defendants' pleas of justification and fair comment to be supplied within seven days from the date of their letter. When the particulars were not forthcoming, the plaintiff filed an application under O 18 r 12 of the Rules, to compel the defendants to deliver the particulars within seven days of the order to be made and for an extension of 14 days after the delivery of such particulars for the reply to be filed.

The application for particulars came before me on 13 August 1987 and after hearing submissions, I had accordingly ordered the defendants to deliver the particulars of fact on their pleas of justification and fair comment within seven days of the order pursuant to O 18 r 12(3) of the rules.

I pause here to state that at the hearing of the application, a preliminary issue was taken by the defendants that the constitutional issue raised in para 1 of their statement of defence be decided first under O 32 r 2 of the rules, before the application for particulars be heard as the determination of the constitutional issue would provide the defendants with a complete defence to this suit and thus render the application for particulars an exercise of futility.

As the defendants' purpose of raising the preliminary objection then was to stay the hearing of the application for particulars, I had disallowed the preliminary objection on the ground that if indeed the determination of the constitutional issue will have the effect of bringing this suit to an end, the defendants should have proceeded with the issue earlier. That opportunity first presented itself when the defendants were served with the writ and statement of claim. The defendants could have then entered a conditional appearance and within the time limited under O 12 r 7(1) of the rules, apply to court to have the writ and statement of claim set aside on the ground that the cause of action is not maintainable against them by virtue of art 10 of the Federal Constitution.

The defendants, however, chose to file a statement of defence instead, wherein, inter alia, they pleaded art 10. Even at that stage, the course was still open to the defendants to apply to have the writ and statement of claim struck out under O 18 r 19 of the Rules, on the ground that the cause of action is frivolous and vexatious as it is not maintainable against them under art 10.

Again no such course was taken by the defendants but instead at the hearing of the application for particulars, they applied orally to have the constitutional issue tried first in preference to the application for particulars.

Under such circumstances, I had considered that the timing of the preliminary objection was not made bona fide bearing in mind that the defendants had in their statement of defence given their assurance that they would supply the particulars separately but when the particulars were requested for, the defendants replied that since they had pleaded art 10, it was premature for the plaintiff to request for such particulars, thus compelling the plaintiff to file an application to obtain the very same particulars that the defendants had expressly undertaken to supply. By raising the preliminary objection, the defendants have again placed another obstacle in the way of the plaintiff trying to obtain the particulars which under O 78 r 3(2) of the Rules, the defendants are obliged by law to supply pursuant to their pleas of justification and fair comment.

Quite apart from the conduct of the defendants, there is also the question as to what form an application under O 33 r 2 of the Rules, should take. The defendants had chosen to apply orally and had reasoned that they were entitled to as being a question of law, they can apply to do so at any time.

However, a commentary in the *Supreme Court Practice* (1985 Ed) Vol 1 at p 516 has this to say on applications of this nature:

> A preliminary question of law should be carefully and precisely framed so as to avoid difficulties of interpretation as to what is the real question which is ordered to be tried as a preliminary issue.

Framing such an issue must necessarily mean that a formal application in writing should be made when the issue of law sought to be determined be expressed in clear and unequivocal terms. This seems more so when the plaintiff had indicated that art 10 was not a complete answer to the suit.

It was for these very reasons that I had disallowed the defendants' preliminary objection to the application for particulars being heard until after the constitutional issue has been argued and determined, but this does not mean that the defendants are prevented from applying to have the constitutional issue determined before trial, provided of course, all the formalities have been adhered to. This is so as submissions on the merits of the constitutional issue were never made nor can my decision to disallow the defendants' preliminary objection be regarded as being in any way a decision based on the merits of the constitutional issue. I need to stress this, as at the beginning of this submission, Datuk Puthucheary, leading counsel for the defendants, had claimed that my decision had the effect of precluding the plaintiff from applying to have para 1 of the statement of defence struck out under O 18 r 19 of the Rules, on the ground that the court cannot be asked to determine the same issue twice. In this case, I had not heard arguments nor made any ruling on the constitutional issue and as such, reference to the plaintiff or for that matter, the defendants being estopped from raising the same constitutional issue, either under O 18 r 19 or under O 33 r 2 of the rules, does not arise.

Going back to 13 August 1987, when the order to deliver the particulars was made, the defendants duly complied with the order and served and filed the further and better particulars dated 20 August 1987. However, the plaintiff was not satisfied with the manner in which the facts were presented and on 2 September 1987, filed an application under O 18 r 19(1)(c) of the Rules and under the inherent jurisdiction of the court to have the particulars struck out on the ground that they tend to prejudice, embarrass and/or delay the fair trial of the action. In the same application, the plaintiff has also applied to have para 1 of the statement of defence struck out under the provisions of the same Rules.

I heard this application, at least that part of it that seeks to strike out the particulars supplied, on 15 September 1987, and after concluding that such particulars have not complied with O 18 r 12(7) and Form 35 of the Rules, I had ordered that the defendants restate the particulars in the manner asked for in the order dated 13 August 1987 and in compliance with Form 35, within 14 days. At the same hearing, I had adjourned

the plaintiff's application to have para 1 of the statement of defence struck out, to another date.

Pursuant to this second order, the defendants supplied the second set of further and better particulars dated 29 September 1987 and the instant proceedings before me is yet another application by the plaintiffs under O 18 r 19(1)(c) of the Rules and under the inherent jurisdiction of the court to have the second set of particulars supplied pursuant to the order of court dated 15 September 1987 struck out for non-compliance of the earlier order dated 13 August 1987. Together with this application, the parties have also agreed to have the plaintiff's application to have para 1 of the statement of defence struck out, heard at the same time.

As a preliminary point, the defendants have objected to this second application being heard and determined on the ground that the prayers asked for are substantially the same as those contained in the earlier application that had already been disposed of on 15 September 1987. They contend that under these circumstances, the principles of res judicata and/or issue estoppel apply to preclude the plaintiff from pursuing the same matter twice.

I do not consider there is any basis for this contention as at the hearing of the earlier application, although submissions were made, my decision to have the defendants restate the particulars asked for in compliance with the order of court dated 13 August 1987 and with Form 35, had nothing to do with the merits of the application. At that hearing I was more concerned with the defendants complying with the order of court and that the particulars be furnished in the manner ordered and in compliance with Form 35, so that they would not be precluded from relying on their defences of justification and fair comment purely on the technical ground of non-compliance.

In this respect too, the defendants' contentions that this second application should be preceded by a written request to supply particulars under O 18 r 12(6) of the Rules, is again misconceived as the plaintiff had already done so through his solicitors' letter dated 8 May 1987. As far as this court is concerned, that written request is equally applicable to this second application as no particulars were furnished pursuant to the written request as the first set of particulars were only furnished pursuant to a court order. Under these circumstances, there is no necessity for a second written request and in any event, the defendants have not shown themselves to have been in any way prejudiced by the lack of one.

Coming now to the merits of this application, the only issue for determination is whether the defendants have complied with the law and procedure with regard to the supply of such particulars on their pleas of justification and fair comment.

The law that is relevant, is the general law relating to pleadings and I can do no better than to be guided by Ackner LJ in the case of *Lucas-Box* v *News Group Newspapers Ltd*,[1] where his Lordship stated that law to be as follows:

> It is axiomatic that the function of pleadings is to define the issues between the parties, so that the plaintiff and the defendant know what is the other side's case and thus everyone, counsel, judge and jury are able to focus upon the real nature of the dispute. Although to one it may mean a startling observation, we can see no reason why libel litigation should be immune from ordinary pleading rules.
>
> ... It has become the settled practice for a plaintiff, where the meaning of the words complained of is not clear and explicit, to plead the meaning which he says the words bear. This enables the defendant to know what case he has to meet and to prepare his defence accordingly. Such a practice is of further assistance to the court since it thus clearly provides to the trial judge the meaning upon which he must rule in deciding whether the words published are capable of being so understood.

In this case, since we are concerned with the matter of particulars to be supplied, such particulars must relate to the facts and not evidence as the proceedings are still at the exploratory stage of finding out what those facts are to support the pleas of justification and fair comment. Moreover, the function of particulars is to ensure that the litigation between the parties, particularly the trial, should be conducted fairly, without surprises and to reduce costs; and this can only be achieved when the facts on which the defendants rely to justify that the words complained of are true and fair comment, are forthcoming from the defendants, so that all issues can be predetermined before trial.

Turning now to the first article that appeared in the defendants' newspaper on 1 February 1987, the plaintiff has already ascribed and pleaded the natural meanings to be put to the article as well as the innuendoes to be attached to the article together with particulars of facts on which he based his innuendoes, at paras 4 and 5 of his statement of claim. Likewise, he treats the second article that appeared in the defendants' newspaper on 22 February 1987, in the same fashion and manner as seen from paras 7 and 8 of his statement of claim.

It is to refute these defamatory meanings as ascribed to and pleaded by the plaintiff that the defendants are now obliged to give particulars of matters pursuant to the court order dated 13 August 1987 to justify that what were printed concerning the plaintiff are true in substance and in fact and that their comments are fair. Under such circumstances, when supplying the particulars as ordered, I would have expected the defendants to be guided by the defamatory meanings as alleged by the plaintiff and taking the sting of such meanings to state in numbered paragraphs a pre-

cise summary of what facts they rely to support their pleas of justification and fair comment. To me this would be a more appropriate and practical approach as far as the pleadings go, for at the end of the day, what is sought to be disclosed to the plaintiff are facts on which not only the defendants must rely to support their defences of justification and fair comment but also the plaintiff when filing his reply.

However, this course was not taken and the defendants chose instead to treat both articles piecemeal by taking a paragraph or part of a paragraph of the articles, head it as 'comment' for some, 'statement of fact and comment', for others, a third heading called 'statement of fact' with a fourth heading called 'comment and fact'. They then proceeded to enumerate the particulars in respect of each 'comment, statement of fact and comment, statement of fact' and 'comment and fact' and the result is a 49-paginated pleading titled further and better particulars made up of 27 romanized paragraphs relating to what the defendants maintain are facts relating to justification and another 27 romanized paragraphs of facts relating to fair comment and two other separate paragraphs stating the meanings to be attributed to the words sought to be justified and commented upon.

There is nothing wrong with this mode of presentation, although I must admit that at first, I found it very confusing but after a careful study of it, I realize that what the defendants had attempted to do is to leave no stone unturned but to particularize facts of every sentence or paragraph of the two articles.

Our High Court Rules do not prescribe a specific form as to how such particulars should be presented except for Form 35 which states generally that the particulars asked or ordered should be in numbered paragraphs. In addition to this, regard must be had to the order for particulars given on 13 August 1987, where, for the pleas of justification the defendants had to:

(1) state with full particulars the facts and matters relied upon on the plea of justification;
(2) identify all relevant documents relied on; and
(3) state precisely the meaning to be attributed to the words sought to be justified.

For the plea of fair comment, all the defendants need do is to state precisely the facts upon which the comments are based.

On the particulars as supplied by the defendants, have they complied with the general rules of pleading and the order of court dated 13 August 1987?

The plaintiff contends that they have not, for the very reason that whatever facts supplied are insufficient and inadequate as to leave him in doubt as to the defendants' defence and that the bulk of the so-called particulars related to evidence rather than to facts. The plaintiff also complains that the defendants have also failed to state clearly and fully the meanings attributed to the words published.

The defendants' reply to this is that they have complied strictly with the order of court and from the particulars furnished, the plaintiff has no cause to complain as he is now placed in the position of knowing what case he has to meet at the trial.

To determine these objections, I shall now look at the particulars as presented by the defendants and consider whether they are the particulars of fact as required by law and procedure to be supplied.

They are found in the bundle of pleadings marked 'A' where they appear from pp 79-128. Going through each paragraph under the four headings of 'comment, statement of fact and comment, statement of fact' and 'comment and fact', the only statements under the heading of 'particulars', appearing in the 27 paragraphs relating to the plea of justification, which I consider to be particulars of fact are those which I reproduce as follows:

(1) The plaintiff has made statements to the effect that Singapore was free of corruption and money politics.
This fact appears at p 80 of bundle A.
(2) Lee Kuan Yew and Teh Cheang Wan were close political collaborators.
(3) Lee Kuan Yew has praised Teh Cheang Wan.
(4) Lee Kuan Yew and Teh Cheang Wan admired Japanese values and culture.
Facts (2)-(4) appear at p 81 of bundle A.
(5) There is no known further investigation into where the drug Amytal came from.
This facts appears at p 85 of bundle A.
(6) The drug was not given to Teh Cheang Wan by his doctors or his daughter.
(7) The Corrupt Practices Investigations Bureau ('CPIB') Headquarters is in Hill Street, and Teh's office is in Maxwell Road.
Facts (6) and (7) appear at p 89 of bundle A.
(8) The collapse of the National Bank of Brunei on 20 November 1986.
This fact appears at p 90 of bundle A.
(9) Liaw Teck Kee reports to the CPIB on 21 November 1986 that Teh Cheang Wan received $800,000 in bribes.
This fact appears at p 91 of bundle A.
(10) The appointment of a commission of inquiry into the investigation of Teh Cheang Wan's death.
This fact appears at p 93 of bundle A.
(11) The lack of a public inquiry on corruption.
(12) The lack of a public inquiry on Phey Yew Kok.
Facts (11) and (12) appear at p 99 of bundle A.

(13) The CPIB is under the plaintiff's charge.
(14) The plaintiff has been the Prime Minister in Singapore for 28 years.
Facts (13) and (14) appear at p 101 of bundle A.
(15) The charging and conviction of Liu Cho Chit on or about February 1987.
This fact appears at p 103 of bundle A.

For the plea of fair comment, the particulars of fact on which the comments are based are also found in 27 paragraphs at pp 104-126 of bundle A, and going through each paragraph, I notice that the same 15 statements of fact that I have singled out above for the plea of justification are repeated at pp 104, 105, 109, 113, 114, 117, 122, 125 and 126 of bundle A. Thus the same facts are relied upon by the defendants to support their pleas of justification and fair comment. As for the rest of the particulars that I have not singled out, they refer specifically to speeches made by the plaintiff and other persons at various times and places, newspaper reports of such speeches, articles and editorials in magazines and newspapers, reports of parliamentary proceedings and other judicial tribunals, statements of various persons and references to specified Acts, and that the same documents are relied for both defences. Unfortunately, there are no statements or summaries of fact in such speeches, reports, statements and articles on which the defendants rely to justify what they had printed and on which their comments are based. By merely stating their existence without more, is it expected that the plaintiff should go through all the documents as specified by the defendants and elicit what facts the defendants would probably rely in support of their defences of justification and fair comment? By identifying the various documents where such facts can be found can it then be said that the defendants have supplied the relevant facts that they are bound to supply?

I answer these questions in the negative as reference to documents alone can never be regarded as the particulars of fact that the defendants have been ordered to furnish; such reference points more to the nature of the evidence on which the defendants intend to produce at the trial. By themselves, the documents relate as to how the defendants will prove their case as opposed to facts they will rely on in support of their pleas of justification and fair comment.

For the plea of justification, can the above 15 statements of fact that I have singled out be regarded as sufficient to support the meaning of the words that the defendants seek to justify? Reading the 15 statements I consider they appear to be very general as what the defendants had done is merely to state the obvious. Of course this ties up neatly with the meanings that the defendants have ascribed to the articles which are also expressed generally and superficially. These appear at p 103 of bundle A in the following manner:

> The articles in question are political commentaries on Singapore following the suicide of Teh Cheang Wan and allegations of corruption and should be read as a whole. The sting of the articles published in the *Sunday Star* of 1 and 22 February 1987 is that Teh Cheang Wan's suicide was connected with the Japanese sense of honour. People believe that there is corruption in Singapore inspite of the plaintiff and what the plaintiff had said about neighbouring countries on the question of corruption. Despite the plaintiff's claim of full control and knowledge of the personal integrity of the members of the cabinet and events in Singapore, the plaintiff did not seem to know the full extent of corruption in Singapore.

Reading the two published articles in their entirety, although there were no specific charges of impropriety levelled against the plaintiff, the style and manner in which they were written particularly the references made of the plaintiff and the choice of words in the titles of both articles are arresting in themselves as to leave me with no doubt that the articles are not as innocent as the defendants make them out to be.

Under such circumstances where the alleged defamatory article alludes to charges which are not specific but general in nature, a defendant who pleads justification must state some specific acts and instances of misconduct imputed to the plaintiff and follow these with the precise particulars of fact as tending to show the truth of such misconduct. This proposition of the law has been long established since the decision of *Zierenberg & Anor* v *Labouchere*,[2] where Kay LJ also held at p 190 'there is another obvious reason for requiring precise particulars, namely, that the plaintiff may know the case he has to meet and what acts he is alleged to have committed which justify the general charge against him'.

In this case, I consider that by merely stating the obvious, the particulars supplied by the defendants are too general as to embarrass the plaintiff as he does not know the precise acts he is alleged to have done which justify the general charges against him. If such particulars are allowed to remain, what I can foresee is that the trial will be a long drawn out one and this fact alone, defeats the very purpose for which such particulars were ordered to be furnished in the first place. Since the same facts are relied upon by the defendants for their plea of fair comment, I place the same considerations and conclusions that I have already done in the case of the plea of justification.

Objection was also taken by the plaintiff that the facts relied upon by the defendants and contained in the newspapers and magazines which have been identified by the defendants are facts that were not in existence at the time the first article was published on 1 February 1987. The defendants deny this and they maintain that the facts were in existence at the date of the first publication although they were reported in the magazines and newspapers after the date of such publication.

Determination on this objection would have been made easier and possible if only the defendants had stated the precise facts in the magazine and newspaper reports they rely on. Since they have not done so, the court is left with nothing to base any finding on this objection.

At p 126 of bundle A, under para xxviii, the defendants have also given the meaning to be ascribed to the articles followed by statements of general facts pursuant to O 78 r 3(2) of the rules.

This particular Order and Rule can also cover the situation where the plea of justification and fair comment are pleaded as one, a plea which the English courts refer to as the 'rolled up' plea and which is now no longer of practical importance as such a plea has also been accepted as referring to only the plea of fair comment. However, under our O 78 r 3(2) of the Rules, when the two pleas are pleaded, a defendant must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that such words are true.

In this case, the defendants have pleaded justification and fair comment separately and as such, they rely on two distinct and separate defences and such defences can never be regarded as falling within the nature of a 'rolled up' plea. Hence, pleading the general particulars as the defendants have done is quite unnecessary and redundant and the same consideration applies to the meaning that the defendants have attributed to the articles under their plea of fair comment, for all that was ordered of the defendants is for them to state precisely the facts upon which the comments are based. I have no hesitation in holding that this paragraph should be struck out altogether.

Having ruled that the general and obvious facts disclosed by the defendants embarrass the plaintiff and delay the fair trial of this action, I now consider whether this is a proper case in which the court can exercise its discretion to have the defences of justification and fair comment struck out under O 18 r 19(1)(c) of the rules.

It is now settled law that the remedy under O 18 r 19(1)(c) is only available in clear and obvious cases. This is particularly so as the effect of such a remedy is to prevent a litigant, be he the plaintiff or the defendant, from proceeding with his case. It is a remedy which has to be exercised sparingly and with caution but in the proper case unhesitatingly.

Miss Sreenevasan has submitted that the defendants are willing and ever ready to supply further particulars should this court find the particulars already supplied insufficient. This willingness to furnish further particulars presupposes that the particulars which they have already supplied are sufficient though lacking in some material particulars and that such material particulars can be supplemented by the furnishing of further particulars. This is all well and good, if indeed the particulars they have already supplied are indeed sufficient but lacking in material particulars.

In this instant, I have already held that such particulars are too superficially general as to be devoid of any clarity as to what the defendants seek to justify and to fairly comment on. By merely stating the obvious, by presenting them in a repetitious and confusing manner, I find it very difficult to appreciate what the defendants intend to justify or comment on and this stems from the non-disclosure of sufficient material facts.

The defendants have had every opportunity to furnish such facts. That opportunity first presented itself when they filed their original statement of defence. At that stage, they reserved their right to do so and pleaded that they would furnish such facts separately. When they failed to do so, the plaintiff formally requested for such particulars through his solicitors' letter dated 8 May 1987. This would be the second opportunity when the obligation to supply arose but on this occasion, the defendants maintain that they are under no obligation to supply particulars in view of the protection afforded by art 10 of the Federal Constitution which they have pleaded as one of their defences.

The stand taken by the defendants had forced the plaintiff to apply to court for such particulars and an order to supply particulars was made on 13 August 1987. The defendants duly complied with the order but since the mode of presentation of the particulars did not comply with the order and with Form 35, I had directed that the defendants restate the particulars in the manner ordered and in compliance with Form 35. This would be the third occasion that the obligation to supply had arisen and although the defendants had obliged, they appear to have done so with complete disregard to the form and manner in what those particulars were ordered to be supplied.

Thus this instant application is the fourth occasion when the obligation to supply arose and quite apart from the opportunities that were available to the defendants, they have also attempted to have the first application for particulars stayed by applying orally to have the constitutional issue raised in their statement of defence decided before the application for particulars was heard.

The very conduct of the defendants and their reluctance to supply sufficient and material particulars for which they are by law bound to supply, and the substance of the particulars of fact they had supplied, all add up to the conclusion that they do not have the material facts on which they can justify the defamatory meanings of the words they had published or on which

their comments were based. On that finding, it is my considered opinion that this is a proper case to which the remedy under O 18 r 19(1)(c) of the Rules should be ordered and I accordingly strike out paras 8 and 9 of the statement of defence.

Moving on to the constitutional issue, what is pleaded in para 1 of the statement of defence is that art 10 of the Federal Constitution provides a complete defence in that the filing of this defamation suit constitutes an unlawful interference of the defendants' right of freedom of speech and expression as enshrined in art 10(1)(a). The plaintiff questions the defendants' interpretation on the particular clause of that article, for he maintains that the right is not an absolute one as it cannot be accepted as conferring a licence to violate the rights of others, and as such the fundamental right to freedom of speech and expression is subject to the laws of defamation that are applicable in this country. Thus the only issue for consideration is the extent of the right conferred by art 10(1)(a) and whether the plaintiff has any cause of action against the defendants.

Article 10 deals with freedom of speech, assembly and association and is made up of four clauses. Insofar as it relates to the main issue at hand, only two clauses are relevant and they read as follows:

> 10(1) Subject to Clauses (2), (3) and (4) —
>
> (a) every citizen has the right to freedom of speech and expression;
>
> ...
>
> (2) *Parliament may, by law impose* —
>
> (a) *on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary* or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or any Legislative Assembly or *to provide against* contempt of Court, *defamation*, or incitement to any offence; (Emphasis is mine.)

Decisions reached by our courts when discussing the freedom guaranteed by art 10 in the case of *Madhavan Nair & Anor* v *PP*,[3] *Lau Dak Kee* v *PP*,[4] *PP* v *Ooi Kee Saik & Ors*,[5] and *PP* v *Param Cumaraswamy (No 2)*,[6] all point to the fact that the rights conferred by art 10 are not absolute but are subject to restrictions imposed by law under art 10(2)(a).

One such restriction is found s 27 of the Police Act 1967 which Parliament passed in 1967 and which has been held in *Lau Dak Kee*'s case[4] as restricting the right of freedom to hold public assemblies and meetings by conferring powers on the police to regulate such public assemblies and meeting.

Another is the Sedition Act 1948, that imposes restrictions on the right to freedom of speech and expression, so held in *Param Cumaraswamy*'s case.[8]

However, in the case of defamation, it is the defendants' contention that except for the law of criminal defamation in the Penal Code (FMS Cap 45), Parliament has not passed any other written law under art 10(2)(a) restricting free speech and expression by stating or defining the law against defamation. They contend further that the Defamation Act 1957, being a pre-Merdeka legislation, cannot be construed as a law imposed by Parliament on the right of freedom of speech to provide against defamation.

It is true that Parliament has not, under art 10(2)(a), enacted any law against defamation and I consider that it is not necessary for it to do so as at Merdeka Day, there were already laws in existence against defamation.

These are found in s 3(1) of the Civil Law Act 1956 that allows the courts, in the absence of any written law, to apply the common law of England relating to civil wrongs of all kinds including defamation, libel and slander, subject to such qualifications as local circumstances render necessary. In 1957, the common law of defamation was modified by the Defamation Act 1957, which came into force on 1 July 1957 and despite art 10(2)(a), that Act continues to have the force of law to this very day as Parliament has not repealed it. This is so as it is not unconstitutional, as it was enacted by the body, that is the predecessor of the Parliament that we know of today. It is also not inconsistent with any provision of the Constitution, in particular art 10(1)(a). Moreover, art 162(1), preserves all existing laws (which has been defined by art 160(2) to include both written and common law) in operation in the Federation immediately before Merdeka Day.

It is clear that, read with art 162(1), art 10(2)(a) does not have the effect of eliminating the existing laws in operation prior to Merdeka Day. On the contrary, it complements art 162(1) as by its very provision, Parliament is empowered by art 10(2)(a) to make laws restricting the right to freedom of speech and expression in situations where there are no existing laws providing for such restrictions. In this respect, if one looks closely at the first few words of art 10(2)(a), what it states is that 'Parliament *may* by law impose...' (emphasis is mine) and by that very expression, the mandatory obligation to impose by enactment is absent as the need to legislate only arises when the occasion demands ie to fill in any lacuna in the law.

Thus as at Merdeka Day, there were already defamation laws in existence and in force which render the need to legislate under art 10(2)(a) redundant. This conclusion is reinforced by the fact that Parliament had,

on 20 February 1983, pursuant to art 10(2)(a), made provisions for the prosecutions of criminal defamation by introducing a new s 298A in the Penal Code (FMS Cap 45) and this, I consider, was solely done to remedy the absence of any laws pertaining to such criminal prosecutions.

Perhaps the clarity and purpose of art 10(2)(a) when read with art 162(2) can be easily seen from art 19(1)(a) and (2) of the Indian Constitution, which I reproduce as follows:

> Right to Freedom.
>
> 19(1) All citizens shall have the right —
>
> (a) to freedom of speech and expression.
>
> (2) Nothing in sub-clause (a) of clause (1) shall effect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the Security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Reading this particular article of the Indian Constitution, it is clear that where our Constitution provides a separate transitional provision as to the preservation of the existing laws prior to Merdeka in art 162(1), the Indian Constitution has treated the same subject matter by incorporating it together with its art 19 which is in pari materia with our art 10(1)(a) and to that extent, decisions reached by the Indian courts when discussing their art 19 are equally authoritative.

In *Santokh Singh* v *Delhi Administration*,[7] the Indian Supreme Court expressed the concept of the freedom of free speech and expression in the following manner:

> The fundamental right guaranteed by art 19(1)(a) and the interest of public protected by art 19(2) must be properly adjusted and reasonable balance struck between the two. There can be no dispute that there is no such thing as absolute or unrestricted freedom of speech and expression wholly free of restraint for that would amount to uncontrolled licence which would tend to lead to disorder and anarchy. The right to freedom of speech and expression is undoubtedly a valuable and cherished right possessed by a citizen in our Republic ... Freedom to think as one likes, and to speak as one thinks are, as a rule, indispensible to the discovery and spread of truth and without free speech, discussion may well be futile. But at the same time, we can only ignore at our peril the vital importance of our social interest in, inter alia, public order as security of our State. It is for this reason that our Constitution has rightly attempted to strike a proper balance between the various competing social interests. It has permitted imposition of reasonable restrictions on the citizen's right of freedom of speech and expression in the interest of, inter alia, public order, security of State, decency or morality and impartial justice, to serve the larger collective interest of the nation as a whole.

My attention was also drawn to another Indian case of *Purshottam Ltd* v *Prem Shanker*,[8] where the same issue was examined as to the limitations imposed by the Indian Constitution on the fundamental right of free speech and expression and the court held, inter alia, that it is subject to the law of civil defamation. In that case, an attempt was made to exclude civil defamation from the definition of existing laws appearing in art 19(2) of the Indian Constitution, so that it could provide a defence in a civil action for damages for libel.

Relying on this case, the defendants have submitted that the freedom of free speech and expression is only restricted if there is an express provision to that effect which is found in art 19(2) of the Indian Constitution but is absent in our art 10(2), and that the existing laws of defamation which have been preserved by our art 162(1) cannot restrict the right guaranteed by our art 10(1). Here again I cannot find any basis for such a contention as it goes against the very concept of the notion of liberty. Article 10(1)(a) and (2)(a) and art 162(1) must be read together so that a proper balance can be maintained by the presence of the right guaranteed by art 10(1)(a) on one hand and the interests of the public as envisaged by art 162(1) on the other.

Professor Harry Street in his book titled *Freedom, The Individual and the Law* (5th Ed) at p 312, sums up that concept very nicely in the following manner:

> The jurisprudential notion of liberty is the same, whether we have the Dicey rule of law or a Bill of Rights. For example, freedom of speech can never be a positive power to do something. Every legal system prescribes that you cannot do this and this: *you must not defame another*, you must not be seditious, you must not be obscene, and so on. The legal concept of liberty is that there are residual areas of great importance where man is free to act as he likes without being regulated by law.
> (Emphasis is mine.)

The defendants have also attempted to rely on the decisions of the American courts to show how they deal with issues relating to the First Amendment to the Constitution of the United States of America, the material parts of which reads as follows:

> Congress shall make no law ... abridging the freedom of speech, or of the press or of the right of the people peaceably to assemble and to petition the government for redress of grievances.

In terms and expression, the First Amendment is totally and radically different from our art 10 and much as I appreciate the time spent and expenses incurred in getting and going through the American case law, I do not consider that they are of any persuasive value to me.

In the course of these proceedings, aspersions of bad faith were also made in that as the Prime Minister of a foreign country, the plaintiff is not seeking to vindicate his personal reputation by submitting himself to

the jurisdiction of the Malaysian court. The defendants maintain that what the plaintiff seeks through this suit is an endorsement of his government and rule.

If indeed that is the plaintiff's intention, I consider that this court is not the proper forum to which he can turn to, to obtain that kind of a remedy. It is only his electorates who can endorse his government and rule, ie the people of Singapore who elected him into power in the first place.

I treat this suit as nothing more than another libel suit filed by a plaintiff who happened to be the Prime Minister of a foreign country and who has now complained that he has been defamed in his office. Since art 10(1)(a) does not prohibit him from pursuing his rights under the law against defamation, I consider that he is entitled to bring this suit against the defendants.

Since the Defamation Act 1957 restricts the defendants' right to free speech and expression and that the only known defences in any action for libel are those stated in the Act which does not include art 10(1)(a), I accordingly strike out para 1 of the statement of defence as being frivolous and vexatious under O 18 r 19(1)(a) of the Rules and under my inherent jurisdiction.

Finally, I allow the plaintiff an extension of time of 14 days from date hereof to file a reply and I also order that the costs of these proceedings be paid by the defendants to the plaintiff.

Application dismissed.

Solicitors: *Shearn Delamore & Co; Skrine Co.*

Reported by *S Surenthiraraj*